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November 21, 1983

John J. Drynan, M.D.  
Director  
Montana Department of Health  
and Environmental Sciences  
Cogswell Building  
Helena, Montana 59620

Mr. John G. Welles  
Regional Administrator  
EPA, Region VIII  
1860 Lincoln Street  
Denver, CO 80203

RECEIVED

DEC 2'83

WASTE MGT. BR.

RE: Proposed East Helena Superfund Site

Gentlemen:

As you know, over the past several months, the area near ASARCO's East Helena Plant has been the subject of extensive investigations and the area has been subject to possible listing as a "Superfund site." On September 8, 1983, EPA published a proposed update to the National Priorities List, formally proposing the site, identified as the "East Helena Smelter," for inclusion on the list. 48 Fed. Reg. 40674. I enclose for your information a copy of comments that have been submitted on behalf of ASARCO Incorporated with respect to the proposed listing.

As you will note from the enclosed comments, it is ASARCO's position that, in light of (1) the very favorable results of the recent blood lead study in the East Helena and Helena areas, (2) the favorable results of the analysis of the ground water samples, and (3) the recent finalization of the lead SIP, no further expenditure of Superfund money with respect to the East Helena site is warranted. Moreover, ASARCO hopes

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John J. Drynan, M.D.

Mr. John G. Welles

November 21, 1983

that it will have your support in urging that the East Helena site not be included on the National Priorities List when the current proposed update is finalized. As I recall, it was Governor Schwinden's position that the East Helena smelter site should not be listed if there were no adverse impacts present. In view of the results now available, it would seem that the position of Montana should become solidified now in opposing the listing of the East Helena site.

Expenditure of federal funds for further study or remedial actions at the East Helena site is not warranted. ASARCO is concerned that ongoing study efforts and expenditures are planned at the East Helena site in the immediate future, even prior to final action by EPA on the proposed update to the National Priorities List. ASARCO believes that such expenditures should be immediately curtailed while EPA's review of the status of the proposed site is pending.

In the event that all expenditures on additional studies of the East Helena site are not curtailed pending the current EPA review of the proposed listing, ASARCO renews its request to participate in the planning for any future studies. As you know, ASARCO has previously stated its view that the magnitude and expense of the blood lead study that has now been undertaken was totally unjustified. ASARCO offered to provide the funds for an appropriate test last February and March, but was informed that the CDC and EPA would proceed only on the basis that ASARCO not participate in any manner. ASARCO now understands that additional surface water, soil sampling and other studies are currently under consideration, at a potential additional cost in the neighborhood of \$500,000. ASARCO believes that the need for further expenditures of this magnitude is extremely wasteful in light of the blood lead study results. Moreover, if additional studies are to be conducted, it is possible that ASARCO may be able to conduct such studies itself more inexpensively than outside consultants. With respect to any future Superfund activities with respect to the East Helena site, it is proposed that an ad hoc working group of interested parties -- similar to that which worked so well on the lead SIP and was convened at the commencement of the Superfund activity -- be established immediately to meet regularly to resolve this matter.

Once you have had an opportunity to consider our views

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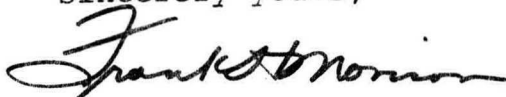
John J. Drynan, M.D.

Mr. John G. Welles

November 21, 1983

please advise us how you intend to proceed. Thank you for your effort and the consideration devoted to this matter.

Sincerely yours,



Frank H. Morison

FHM/mvm

cc: John W. Bartlett  
Harold W. Robbins  
John Wardell  
Gene Taylor  
Melvin A. Sharp, Jr.

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November 4, 1983

Mr. Russell H. Wyer, Director  
 Hazardous Site Control Division  
 Office of Emergency and Remedial  
 Response (WH-548E)  
 Environmental Protection Agency  
 401 M Street, S.W.  
 Washington, D.C. 20460

Re: Comments of ASARCO Incorporated concerning  
 EPA Proposed Amendment to National Oil and  
 Hazardous Substances Contingency Plan;  
 National Priorities List; 48 Fed. Reg. 40674  
(September 8, 1983)

Dear Mr. Wyer:

These comments of ASARCO Incorporated are directed to the proposed update to the National Priorities List (NPL), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as published in the Federal Register on September 8, 1983. 48 Fed. Reg. 40674. The proposed update includes a site identified as "East Helena Smelter." ASARCO is the owner and operator of a primary lead smelter located in East Helena, Montana. Consequently, ASARCO submits these comments and requests that they be considered in finalizing the proposed NPL update.

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I. Deletion of Site

In view of information that has become available subsequent to the publishing of the proposed NPL update, the East Helena Smelter should be deleted from the proposed update and should not added to the NPL when EPA finalizes its proposal.

Concern regarding the East Helena site arose due to the presence of elevated levels of lead in some area soils, which resulted in speculation that these lead levels might cause a health hazard to the population in the town of East Helena. In order to assess the potential impact upon the most sensitive population (children ages 1 to 5), the Montana Department of Health and Environmental Sciences, the federal Center for Disease Control and EPA conducted a child health study in East Helena and the City of Helena during the summer of 1983 at an authorized estimated cost of some \$479,000. The results of this study, which only became available in early October, show no indication of an adverse health impact in the area.

Only one child out of over 400 in the entire area studied had a blood lead level exceeding 30 micrograms per deciliter (ug/dl), the level which the federal Center for Disease Control has stated indicates excessive lead absorption. [Note: For reasons of confidentiality and protection of the interests of the one child, published data has to date referred to this situation as "less than five children."] Moreover, the average blood lead levels among the children tested were 10 ug/dl in

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East Helena and 7 ug/dl in the City of Helena. These averages compare favorably with the national averages of 14.4 ug/dl for like children living in urban areas of less than 1 million and 12.7 ug/dl for like children living in rural areas.<sup>1</sup>

In light of the conclusive results of the study that has taken place, demonstrating no adverse health impacts upon the East Helena population, EPA should now determine that no further expenditure of CERCLA funds is warranted with respect to the site and that no remedial action should be undertaken at the site. In the preamble to the initial NPL which was finalized on September 8, 1983, EPA set forth criteria governing the deletion of sites from the NPL. 48 Fed. Reg. 40668. The preamble states that one basis for the deletion of a site is a determination that no remedial action should be undertaken. The preamble describes the determination to be made as follows:

EPA, in considering the nature and severity of the problems, the potential costs of clean up, and available funds, has determined that no remedial actions should be undertaken at the site.

Based on the results of the blood lead study, such a determination should now be made with respect to the proposed East Helena site.

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<sup>1</sup> EPA Air Quality Criteria for Lead, October, 1983, Review Draft, Vol. I, Table 1-9, p. 1-89.



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ASARCO initially offered to conduct a totally adequate and sufficient blood lead study last February and March, at its own cost and expense. This offer was refused by EPA, which then proceeded with a study of the magnitude and expense that has now occurred. Naturally, ASARCO is pleased that this extensive study has established the fact that the past and present operations of the East Helena Plant have not caused any adverse impact upon the population of East Helena.

The absence of any need for further expenditures and action with respect to the site is reinforced by the recent revision of the Montana State Implementation Plan (SIP) for lead covering the East Helena Smelter area. The SIP revision provides even greater assurance that prospective conditions will not present a health threat, by virtue of the many additional lead emission controls required under the plan. The controls required by the SIP are specifically designed to achieve compliance with the national ambient air quality standards for lead. Therefore, any future air releases from the ASARCO Plant will be federally permitted releases under the provisions of CERCLA.

One additional study of the East Helena site is currently underway. The United States Geological Survey (USGS) is undertaking a study of ground water quality in the vicinity of the smelter. ASARCO understands that the USGS's results from this study should be available in late November. ASARCO was given

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split samples from all of the water sources tested by USGS, which consisted of 19 wells located within 3 miles of the smelter. These samples have been analyzed by ASARCO's EPA-certified laboratory in Salt Lake City, Utah. A report detailing the results of these analyses is attached to these comments.

ASARCO analyzed the samples for those metals for which standards have been established in the National Interim Primary Drinking Water Regulations that have the greatest likelihood of being present based on ASARCO's operations. None of the levels detected exceed the established standards. Therefore, these results further confirm the lack of adverse health impacts from smelter operations. If EPA desires corroboration by the USGS of the above results, ASARCO requests that the comment period concerning the September 8 proposal be extended for 60 days, or that the record otherwise be kept open so that the USGS's analyses of the ground water study and comments thereon may be considered by EPA prior to final action.

In light of these factors, any additional expenditure of funds and effort with respect to the East Helena site would be unjustified, especially in view of the many other sites to which funds and efforts could be more beneficially devoted. In accordance with the criteria cited above, EPA should delete the East Helena Smelter from the proposed NPL update, and not include the East Helena Smelter on the finalization of this



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update. The blood lead study has demonstrated that there is no existing health problem. The ground water study has demonstrated that there are no adverse environmental impacts by that pathway and the recently finalized lead SIP assures greater control of future releases by the air pathway.

II. Mining Jurisdiction Issue

Independent of the foregoing reasons for not including the East Helena Smelter on the final NPL, there is a controlling legal reason why EPA cannot include this site on the final list. By virtue of the statutory exclusions included in the Resource Conservation and Recovery Act (RCRA) and the interrelationship of that Act and CERCLA, EPA has no legal authority to include the East Helena Smelter on the NPL.

In the preamble to the September 8, 1983 finalization of the initial NPL, EPA responds to comments raised previously regarding EPA jurisdiction under CERCLA with respect to mining wastes. EPA's principal arguments are: (1) that "hazardous substances" under CERCLA can include mining wastes, in spite of other applicable statutory provisions, and (2) in any event, EPA has authority to list mining sites due to the presence of "pollutants or contaminants." The first portion of this argument is so strained as to be patently in error, and the second portion of the argument is inapplicable to the East Helena Smelter.

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Pursuant to the Solid Waste Disposal Act Amendments of 1980, solid waste from the extraction, beneficiation and processing of ores and minerals is excluded from Subtitle C regulation under RCRA. EPA's current policy and regulations correctly interpret this exclusion to include solid waste from the smelting and refining of ores and minerals, which includes operations at the East Helena Smelter. 45 Fed. Reg. 76618 (November 19, 1980). The definition of "hazardous substance" in CERCLA explicitly includes hazardous waste regulated under RCRA, except that the definition specifically states "but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress." Mining and mineral processing wastes fit squarely within the category of waste the regulation of which has been suspended by Act of Congress. However, EPA apparently is attempting to expand the definition of "hazardous substance" so that all mining and mineral processing wastes are within the purview of CERCLA if any other definitional elements are triggered. An example of such a triggering is the listing of substances pursuant to Section 311 of the Clean Water Act. Since many metals have been listed under Section 311 of the Clean Water Act, EPA's interpretation would totally undermine and improperly repeal the explicit definitional exclusion of wastes "the regulation of which has been suspended," as in the case of mining and mineral processing wastes. This interpretation is contrary

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to congressional intent and should be discarded by EPA as wholly unwarranted.

In the September 8 preamble, EPA asserts that its authority with respect to mining and mineral processing waste sites is not contingent upon whether or not such wastes are hazardous substances, because EPA in any event has authority to respond to releases of "any pollutant or contaminant." Irrespective of the general validity of this latter contention, it has no current applicability to the East Helena Smelter as can be readily discerned from an examination of the statute and the facts. Pursuant to Section 104(a)(1) of CERCLA, EPA has authority to act with respect to any pollutant or contaminant only when such substance presents "an imminent and substantial danger to the public health or welfare." In light of the conclusive results of the blood lead study in the East Helena area, discussed at some length in Part I of these comments, there is now absolutely no basis for considering this site to be one which presents "an imminent and substantial danger to the public health or welfare." Therefore, EPA's assertion that it has authority over mining and mineral processing sites, as set forth in the September 8 preamble, simply is inapplicable to the circumstances at the East Helena Smelter. For this additional reason, the East Helena Smelter should not be included on the NPL.

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III. HRS Score

The documentation record for the East Helena Smelter indicates that EPA has calculated an over-all hazard ranking system (HRS) score for the proposed site of 61.65. In light of the fact that the recent East Helena blood lead study demonstrated no adverse health effects in the sensitive portion of the population, the site should be deleted and the HRS score obtained is irrelevant. This study effectively analyzed the population's exposure to substances potentially resulting from smelter operations through all pertinent pathways: ground water, surface water, air and direct contact. Its finding of no negative impact effectively demonstrates that any potential for concern indicated by the HRS score is unfounded in reality.

It is also now known that the HRS is a poor tool for selecting sites such as smelters. In a recently completed study, "Analysis of Mining Sites on the National Priorities List," TRC Environmental Consultants, Inc. concluded that mining-related sites (including smelting sites) automatically score high on the HRS due to the large volume of waste they produce and the fact that there are metals in the waste. This is true because the HRS effectively assumes that the entire quantity of waste is composed of its most toxic constituent, regardless of the waste's actual character. Therefore, facilities like smelters, with large volumes of waste containing small percentages of metallic content, will score sufficiently

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to be listed on the NPL unless there is no population in the vicinity. Thus, the HRS will automatically list most smelting facilities without regard to the actual degree of hazard posed by a facility.

For the preceding reasons, the HRS score calculated for the East Helena Smelter is not an appropriate factor in the determination whether or not the site should be included on the NPL. However, because of EPA's past reliance on such scores, ASARCO offers the following comments regarding the calculation of the score for this site. The EPA total score of 61.65, as well as the "direct contact" score of 50.0, result from misapplication of the HRS.

The major fallacy in the HRS calculations relied on by EPA is that they assume a waste disposal area of some 8.4 square miles, including the smelter site, the town of East Helena and surrounding property. This approach is based on the presence of lead in area soils. These soil concentrations may result to some degree from fallout of lead suspended in the air from smelter operations which have been ongoing since 1888. However, if this lead in the area soils resulted from smelter operations, the lead is the result of releases into the environment and cannot properly be viewed as the source of releases --i.e., as a waste disposal area. ASARCO does not believe that EPA has in other instances treated the entire area to which a site has released substances as a waste disposal area.

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Treating any area affected by any release as a disposal area would qualify all but the most pristine areas of the country as waste disposal areas. Referring to the 8.4 square mile area as the "disposal site" and calculating distances from this expanded area severely distorts the HRS process and should not be allowed.

The following corrections should be made to the HRS score to correct the above-mentioned misuse and other inaccuracies.

FIGURE 1 - HRS COVER SHEET

The description should be changed to reflect the fact that the smelter has an on-site disposal area of greater than 2500 tons of iron silicate slag containing small amounts of other metals such as lead and arsenic. Use of the 8.4 square mile area as the "disposal area" is inaccurate and improper (see above).

The scores on this cover sheet should also be changed to reflect the corrections noted in the following discussion of individual score components. The corrected scores are:

Scores: Sm = 45.85 (Sgw=17.14 Ssw=65.45 Sa=41.41)  
Sfe = 0  
Sdc = 25



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FIGURE 2 - GROUND WATER ROUTE WORK SHEET

Route Characteristics - Depth to Aquifer: The EPA documentation record states that the depth to ground water is 0 to 44 feet. Plate 1 of the cited report, "Evaluation of Shallow Aquifers in the Helena Valley, Lewis and Clark County, Montana" (USGS # 80-1102), shows that the depth to ground water in the vicinity of the smelter is 22.1 to 44.3 feet. Therefore, the correct score for this factor is 2, rather than 3.

Route Characteristics - Net Precipitation: According to page 3 of the documentation record, the net annual precipitation is 14.3 inches. Therefore, the score should be 0, rather than 1.

Route Characteristics - Physical State: The physical state of the slag material is stabilized in an iron silicate matrix, generally of large particle size. Therefore, the score should be 0, rather than 2.

Waste Characteristics - Hazardous Waste Quantity: It should be emphasized that the slag pile, which is the only waste disposal area at the smelter site, is not a hazardous waste. It is excluded from hazardous waste designation pursuant to the Solid Waste Disposal Act Amendments of 1980. More importantly, testing of the pile by standard RCRA procedures demonstrates that the material does not have any of the hazardous characteristics specified in 40 C.F.R. § 261. We realize that the HRS does not take such testing and demonstrations of

non-hazardousness into account and feel this is one of the system's most serious faults.

If one assumes that the slag pile is the area of concern, as it must be because it is the only "disposal area" at the smelter, the score in this section should be 8, rather than 6, because there is more than 2500 tons of materials.

Targets - Ground Water Use: The documentation record assumes incorrectly that ground water in the area is the principal source of drinking water supply. East Helena's drinking water is piped from a surface water supply some distance from the site in question. Ground water is used as a secondary source only. Therefore, the correct score in this section is 2, rather than 3.

Targets - Distance To Nearest Well/Population Served:  
This score is inaccurate because the scorer assumes that (1) the "disposal area" covers a 8.4 square mile radius and (2) the entire population of the area uses ground water as its drinking water supply. Both of these errors are discussed above. Because somewhat less (probably far less) than 1000 persons use the ground water as drinking water and, as the documentation record states, the nearest ground water well used for drinking water is approximately 1 mile downgradient from the smelter site, the score for this factor should be 12, rather than 35.

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Resulting Calculations: With the corrections cited above,  
the correct scoring for Sgw becomes:

1.	Observed Release	=	0
2.	Route Characteristics	=	7
3.	Containment	=	3
4.	Waste Characteristics	=	26
5.	Targets	=	18
6.	$7 \times 3 \times 26 \times 18$	=	9828
7.	$9828 \div$ $57,330 \times 100$	=	17.14

Sgw = 17.14

FIGURE 7 - SURFACE WATER ROUTE WORK SHEET

Waste Characteristics - Hazardous Waste Quantity: For the reason previously stated, this score should be 8, rather than 6.

Resultant Score - Due to the above correction, the scoring should be as follows:

1.	Observed Release	=	45
4.	Waste Characteristics	=	26
5.	Targets	=	36
6.	$45 \times 26 \times 36$	=	42,120
7.	$42,120 \div$ $64,350 \times 100$	=	65.45

FIGURE 9 - AIR ROUTE WORK SHEET

Waste Characteristics - Hazardous Waste Quantity: For the reason previously stated, this score should be 8, rather than 6.

Targets - Population Within 4-Mile Radius: Misuse of the definition of "disposal area" to include 8.4 square miles resulted in including populations which were, in some cases, well over six miles from the site, rather than four miles as specified in the HRS. Correcting that error, the population in question (1000 to 3000) lives within 1 to 4 miles of the "disposal area" instead of 0 to 1/4 mile. This makes the correct score 18, rather than 27.

Targets - Land Use: Again, due to the misdesignation of "disposal area" the distance to agricultural land must be corrected. The correct distance is 1/2 to 1 mile. This changes the score to 1, rather than 3.

Resultant Score - Due to the above corrections, the scoring should be as follows:

1.	Observed Release	=	45
2.	Waste Characteristics	=	17
3.	Targets	=	19
4.	$45 \times 17 \times 19$	=	14,535
5.	$\frac{14,535}{35,100 \times 100}$	=	41.41

$$Sa = 41.41$$

FIGURE 10 - WORKSHEET FOR COMPUTING  $S_m$

Corrections previously specified correct this figure as follows:

	<u>S</u>	<u>S<sup>2</sup></u>
Ground Water Route Score (Sgw)	17.14	294
Surface Water Route Score (Ssw)	65.45	4,284
Air Route Score (Sa)	41.41	1,715
$S_{gw}^2 + S_{sw}^2 + S_a^2$		6,293
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		79.33
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_m =$		45.85

#### FIGURE 12 - DIRECT CONTACT WORK SHEET

Observed Incident: There have been no observed incidents resulting from direct contact with the waste in the "disposal area" and, therefore, the score on this factor should be 0, rather than 45.

The alleged incidents of cattle losses noted on the documentation record (1) have not been proven to be due to any materials from the smelter, and (2) were not even alleged to be due to direct contact with the waste. These unproven incidents are alleged to have occurred through exposure from the air and/or surface water routes.

Accessibility: Because there is no observed release in this route, this section must be scored to calculate Sdc. The facility is completely surrounded by a fence or bordered by a stream where there is no fence and, therefore, access is

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limited. Furthermore, restriction of access to non-employees is strictly enforced. However, because barriers are heavily relied upon and access is not impossible, this factor should receive a score of 2.

Containment: If access is obtained, direct contact is unimpeded. Therefore, this factor should receive a score of 15.

Targets - Population Within a 1 Mile Radius: Again, this factor has been calculated by misapplying the concept of "disposal area" to include 8.4 square miles. With the "disposal area" properly defined as the slag pile, a population of 1000-3000 lives within one mile of the site. Therefore, the score should be 3, instead of 4.

Resultant Score - With the corrections specified above, the correct scoring is as follows:

1.	Observed Release	=	0
2.	Accessibility	=	2
3.	Containment	=	15
4.	Waste Characteristics	=	15
5.	Targets	=	12
6.	2 x 15 x 15 x 12	=	5400



7. 5400 ÷

$$21,600 \times 100 = 25$$

Sdc = 25

#### IV. Conclusion

Approximately half a million dollars of federal money has been spent analyzing potential impacts of the East Helena Smelter. ASARCO understands that up to an additional half million dollars has been tentatively authorized for additional studies. In view of the factual and legal circumstances applicable to the East Helena Smelter, this money can certainly be better spent elsewhere. To summarize, the relevant circumstances are:

1. An elaborate blood lead study has demonstrated no adverse health impact in the area.
2. A ground water study has demonstrated no excessive levels of contaminants in area wells.
3. A new SIP will result in greater control and further reduction of lead and other particulate emissions as designed to achieve compliance with national ambient air quality standards.
4. EPA lacks legal authority to include this mineral processing site on the NPL.

Based upon these circumstances, the East Helena Smelter should not be included on the finalized NPL update.

Respectfully submitted,

HOLLAND & HART

By Paul D. Frohardt  
Paul D. Frohardt  
Frank H. Morison

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ATTORNEYS FOR ASARCO Incorporated

ASARCO Incorporated  
Department of Environmental Sciences  
EAST HELENA  
Water Sample Results

ASARCO LAB #	SAMPLE DESCRIPTION	1983 SAMPLE DATE	Pb ppm	Cd ppm	Cu ppm	As ppm
9956 # 1	Domestic Water	10/17	.030	<.004	.007	.008
9957 C. Lamping	Domestic Water	10/17	<.030	<.004	<.004	.017
9958 Kaiser Cemen	Domestic Water	10/17	<.030	<.004	<.004	.029
9959 Dartman	Domestic Water	10/18	<.030	<.004	<.004	.006
9960 Cannon	Domestic Water	10/17	<.030	<.004	<.004	.007
9961 Dover	Domestic Water	10/17	<.030	<.004	.007	.019
9962 Blank	Domestic Water	10/17	<.030	<.004	<.004	<.005
9964 Mockel	Domestic Water	10/18	<.030	<.004	.013	<.005
9965 E.H. So.Well	Domestic Water	10/17	<.030	<.004	.013	<.005
9966 Eastgte Well	Domestic Water	10/17	<.030	<.004	<.004	<.005
9967 E.H. No.Well	Domestic Water	10/17	<.030	<.004	<.004	.009
9968 Am Chemet 2	Domestic Water	10/17	<.030	<.004	.005	<.005
9969 Manion	Domestic Water	10/17	<.030	<.004	.18	<.005
9970 Hoff	Domestic Water	10/17	<.030	<.004	.022	<.005
9971 Craig	Domestic Water	10/18	<.030	<.004	.038	<.005
9973 Burnham	Domestic Water	10/17	<.030	<.004	.012	.041
9974 Olson	Domestic Water	10/17	<.030	<.004	.005	.009
9975 Jensen	Domestic Water	10/17	<.030	<.004	.005	.006
9976 Am Chemet 1	Domestic Water	10/17	<.030	<.004	<.004	.006

0190145